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PRO SE APPELLANT:

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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

ROGER COY, JR.,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 42A05-0603-PC-115
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-9608-CF-041

May 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Roger Coy, Jr. appeals the trial court's denial of his Motion to Correct Erroneous Sentence. Because Coy failed to provide a copy of the abstract of judgment to the trial court, the trial court did not err in denying his motion. Nonetheless, because the record on appeal makes clear that the original sentencing court applied an incorrect statute, we remand this cause to the trial court with instructions to reduce Coy's sentence from sixty years to fifty years and to issue a new abstract of judgment reflecting this change.

Facts and Procedural History

On November 22, 1994, Coy and Milton Lane, Jr. entered the home of Dallas Wallace. Coy killed Wallace with a single gunshot to the head, and Coy and Lane took Wallace's wallet. The State charged both Coy and Lane with murder and burglary.¹ Coy was convicted of both charges, and the trial court imposed concurrent sentences of sixty years for murder and ten years for burglary. The abstract of judgment states: "Sentence for [murder] is 50 years (presumptive sentence in 1994) plus 10 years added for aggravating circumstances for a total of 60 years." Appellant's Second Supp. App. p. 1. Coy took a direct appeal to the Indiana Supreme Court, arguing that the prosecutor had committed misconduct and that the trial court had abused its discretion in admitting certain evidence. Our Supreme Court affirmed Coy's convictions. *Coy v. State*, 720 N.E.2d 370 (Ind. 1999).

On January 3, 2006, Coy filed a Motion to Correct Erroneous Sentence, an Affidavit of Indigency, and a Request for Appointment of Attorney. In his Motion to

¹ Lane was eventually convicted of felony murder.

Correct Erroneous Sentence, Coy argued that he was sentenced in violation of *Blakely v. Washington*, 542 U.S. 296 (2004), and that he was sentenced under the P.L. 164-1994 version of Indiana Code § 35-50-2-3, which provided for a presumptive term of fifty years, when he should have been sentenced under the P.L. 158-1994 version, which provided for a presumptive term of forty years. *See* Appellant’s “Supplementary” App. p. 10-12. Coy did not include the abstract of judgment in his filings. The next day, the trial court issued an order denying Coy’s Motion to Correct Erroneous Sentence and Request for Appointment of Attorney. Coy, *pro se*, now appeals.

Discussion and Decision

On appeal, Coy contends that the trial court erred in denying his Motion to Correct Erroneous Sentence.² He asserts that the trial court was required to correct his sentence because the original sentencing court applied an incorrect statute. A motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. *Robinson v. State*, 805 N.E.2d 783, 785 (Ind. 2004). As the State notes, Coy, in filing his motion, did not attach a copy of the abstract of judgment. Therefore, the trial court did not err in denying Coy’s motion.

However, on appeal, Coy has provided us with a copy of the abstract of judgment from his trial.³ It is clear from the abstract of judgment that the sentencing court applied

² In light of our resolution of this issue, we need not address Coy’s argument that the trial court abused its discretion in denying his Request for Appointment of Attorney.

³ The abstract of judgment is included in Coy’s Second Supplemental Appendix, which was filed nearly two months after the State filed its brief. As such, the State’s brief does not address the abstract of judgment.

the wrong statute in sentencing Coy on his murder conviction. On the date of Coy's crimes, November 22, 1994, there were two versions of the murder sentencing statute—Indiana Code § 35-50-2-3—in effect: P.L. 158-1994, which provided for a presumptive forty-year sentence for murder subject to a twenty-year enhancement, and P.L. 164-1994, which provided for a presumptive fifty-year sentence for murder subject to a ten-year enhancement. The abstract of judgment shows that the sentencing court applied P.L. 164-1994. *See* Appellant's Second Supp. App. p. 1 ("Sentence for [murder] is 50 years (presumptive sentence in 1994) plus 10 years added for aggravating circumstances for a total of 60 years."). But the Indiana Supreme Court has concluded that P.L. 158-1994 governs murders committed between July 1, 1994, and May 5, 1995. *Smith v. State*, 675 N.E.2d 693, 697 (Ind. 1996). Because Coy committed his murder on November 22, 1994, he should have been sentenced under P.L. 158-1994. In this sense, the sentencing court exceeded its statutory authority. A sentence that exceeds statutory authority constitutes fundamental error and is subject to correction at any time. *Lane v. State*, 727 N.E.2d 454, 456 (Ind. Ct. App. 1999).

Coy asks us to remand this case to the trial court so that he can be re-sentenced under the proper statute. Remand for a whole new sentencing proceeding at the trial court level is unnecessary. We remand this cause for the limited purpose of reducing Coy's sentence from sixty years to fifty years: the presumptive sentence of forty years with ten years added for aggravating circumstances.⁴ We also direct the trial court to issue a new abstract of judgment reflecting this change.

⁴ Coy argues that he should be sentenced to the presumptive sentence of forty years because he believes that three of the four aggravating circumstances relied upon by the original sentencing court

Affirmed and remanded.

BAILEY, J., and BARNES, J., concur.

violate the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), and reiterated in *Blakely v. Washington*, 542 U.S. 296, 303 (2004), that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” However, those cases had not been decided when Coy was originally sentenced. As such, the only error in the original sentencing was the application of the incorrect version of the murder sentencing statute. This opinion cures that error.